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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/028187	02/27/99	GEORGE A. BODE BODE & ASSOCIATES 2314 BROADWAY NEW ORLEANS, LA 70125-4125	01-95-0198-U

EXAMINER	
CHARLES T. V. L.	
ART UNIT	PAPER NUMBER
2721	5

DATE MAILED:

03/30/99

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

<b>Office Action Summary</b>	Application No. <b>09/028,187</b>	Applicant(s) <b>Mendes</b>
	Examiner <b>Stephen F. Gerrity</b>	Group Art Unit <b>3721</b>

Responsive to communication(s) filed on 17 Feb 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-5 and 7 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 1-3 is/are allowed.

Claim(s) 4, 5 and 7 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on 17 Feb 1999 is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been  received.

received in Application No. (Series Code/Serial Number) as per Schedule A.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copies have been filed in parent Application Nos. 08/647,066; 08/681,627; 08/681,626; 08/759,723; 08/759,722; 08/759,727; 08/763,679 and 08/884,529.

### ***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 17 February 1999 have been approved by the examiner.

### ***Specification***

3. The disclosure is objected to because of the following informalities: the specification does not include a section labeled "Brief Description of the Drawings". Separate occurrence of sections labeled Brief Description of the Drawing (Figures ....) is not acceptable.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir.

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1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 4, 5 and 7 are rejected under the judicially created doctrine of double patenting over claims 1-3 of U. S. Patent No. 5,720,218 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: arrangement of radial blades on a fruit juice extraction apparatus. Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during

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prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Allowable Subject Matter***

6. Claims 1-3 are allowed.

***Response to Arguments***

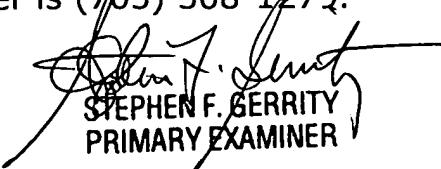
7. Applicant's arguments filed 17 February 1999 have been fully considered but they are not persuasive. The double patenting rejection is repeated.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication should be directed to Examiner Stephen Gerrity whose telephone number is (703) 308-1279.

  
STEPHEN F. GERRITY  
PRIMARY EXAMINER